IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.651 OF 2005

Mr.Prakash G.Chhabria. ...Petitioner.

Vs.

Shri Jeffrey T.D'Souza. ...Respondent.

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Mr.A.V.Jalisatgi for the Petitioner.

Mr.Yogendra Pendse for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

March 14, 2005.

P.C. :

The contention of Learned Counsel appearing on behalf of the Petitioner at the hearing of the Petition was that the Respondent was being paid consolidated wages which were in excess of the minimum wages payable in accordance with the notification issued under the Minimum Wages Act, 1948. Therefore, even on the assumption that the Petitioner was engaged in an establishment in the Engineering Industry the principle laid down by the

Supreme Court in **Airfreight Ltd. v. State of Karnataka,** 1999 II CLR 537 would apply. The Supreme Court held that once the rates of minimum wages are prescribed under the Act, whether as an all inclusive pay packet or by combining basic plus dearness allowance, this would constitute one pay packet. Hence, in cases where the employer is paying a total sum which is higher than the minimum rates of wages including the cost of living index (VDA), he would not be required to pay VDA separately. It appears that this submission has not been squarely urged before the Labour Court and, therefore, has not been considered. At the hearing of the Petition, Counsel appearing on behalf of the Petitioner and the Respondent are agreed that the matter may be remitted back to the Labour Court for fresh determination, particularly in the light of the aforesaid submission.

In the circumstances, the impugned order dated 30th November 2004 in Application (IDA) No.196 of 1998 is quashed and set aside. Application (IDA) No.196 of 1998 shall stand restored to the file of the Fifth Labour Court for fresh determination. Parties are directed to appear before the Labour Court for directions on 28th March 2005. The Labour Court is requested to

dispose of the application on or before 30th June 2005.

The Petition is disposed of since no other points are pressed.

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